IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 275 of 1983

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SHARMA DINESHBHAI FULCHANDDAS - Appellant(s)
Versus
ISMAILBHAI MOHAMADBHAI-DELETED & 7 - Defendant(s)

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Appearance :

MR KG SHETH for Appellant(s) : 1,
None for Defendant(s) : 1 - 2,4 - 5,7 - 8.
NOTICE SERVED for Defendant(s) : 3,
MR MD PANDYA for Defendant(s) : 6,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 01/08/2006

ORAL JUDGMENT

1. Mr K.G Sheth, learned advocate appearing for the appellant seeks permission to reduce the claim in appeal and restrict the same to Rs. 10,000/- before effective hearing. Permission as prayed for is granted and the matter is taken up for final hearing.

2. By way of this appeal, the appellant has challenged the judgement and award dated 09.06.81 passed by the Motor Accident Claim Tribunal, Nadiad in Motor Accident Claim Petition No. 36 of 1979 whereby the Tribunal awarded an amount of Rs. 44,340/- towards compensation

payable to the original claimant by the original opponents. This appeal is for enhancement of compensation.

3. The original claimant-appellant herein had filed claim petition seeking compensation to the tune of Rs. 90,000/- in respect of the accident which occurred on 09.05.97 on the State Highway leading to Ahmedabad from Kathlal while the appellant was travelling as a passenger on hire in truck bearing no. GTB 6878 driven by original respondent no.2 and owned by original opponent nos. 1, 7 and 8. When the truck reached Gadvel bridge, another truck bearing no. GTD 5111 coming from the opposite side driven in a rash and negligent manner dashed against the left arm of the appellant causing serious injuries to him. Under the aforesaid circumstances, the claim petition came to be filed. The Tribunal after hearing the parties passed the aforesaid award.

4. Mr K.G Sheth, learned counsel for the appellant has contended that the appellant had to undergo treatment for a period of about eight months and therefore he is entitled to Rs 25,000/- by way of pain, shock and suffering against which the Tribunal has awarded only Rs. 15000/-. He has further contended that the Tribunal has

erred in granting only Rs. 600/- towards personal attendant charges instead of Rs. 1200/- which was actually incurred.

4.1 Mr Sheth has further contended that the Tribunal has awarded only Rs. 21,600/- towards future loss of income whereas considering the decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation and Ors. Vs. Trilok Chandra & Ors."*** reported in 1996(3)GLR 136, the appellant is entitled for an additional amount of Rs. 15000/-. He has further submitted that the appellant is also entitled to an additional amount of Rs. 1200/- towards transportation and Rs. 2000/- towards special diet over and above the amount awarded by the Tribunal under the said heads.

5. Mr M.D Pandya, learned counsel appearing for the respondent has submitted that the Tribunal after considering the facts and circumstances of the case and the evidence produced on record has awarded the amount of compensation which is not required to be disturbed and therefore does not call for interference of this court.

6. Heard learned counsel for the parties. I have gone through the award of the Tribunal and the materials

placed on record. The Tribunal while calculating the amount to be awarded under the head of pain, shock and suffering has first of all considered the overall disability of the appellant at 17% which included disability of 35% of the left upper limb. Thereafter the Tribunal relying on the decision of this Court in the case of ***Babu Mansa v Ahmedabad Municipal Corporation reported in 19 GLR 492*** has observed in para 11 of the award as under:

> "...The commonly accepted or conventional amount of compensation, under the head of pain ans suffering in case of loss of limb is Rs. 10000/- as held in Meenaxiben's case, (13 GLR 662). However, even though the injuries have not resulted in loss of limb but when in the case of a claimant who has suffered severe physical handicap in a vital limb restricting his activities and heading to diminution in the enjoyment of amenities of life and social discomfiture must be taken into account. In Babu Mansa(supra) taking all these factors into consideration it was held that the claimant is entitled to a compensation in the sum of Rs. 15000/- as the conventional global amount under the combined head of pain and suffering and the loss of amenities and the enjoyment of life although no loss of limb was involved..."

6.1 I am in complete agreement with the aforesaid reasoning of the Tribunal and therefore no additional amount is required to be awarded under the head of pain, shock and suffering.

7. However, as regards the amount under the head of personal attendants is concerned, looking to the fact that the appellant was attended to for a period of about eight months while in the hospital, the amount of Rs. 600/- is on the lower side. Even if minimum of Rs. 5/- is taken as attendant charge per day, the same shall come to Rs. 150/- per month and Rs. 1200/- for a period of eight months. In that view of the matter, the appellant is entitled to an additional amount of Rs. 600/- under the head of attendant charges.

8. As regards the head of future loss of income is concerned, the contention of the appellant is required to be accepted. The Tribunal has considered the oral and documentary evidence in detail and has assessed the monthly income of the appellant at Rs. 500/-. Even if the same is considered, the future loss of income, in view of the 20% disability and the decision of the Apex Court in the case of ***"U.P. State Road Transport Corporation (supra)***, is to be calculated on the basis of average of double the income which comes to Rs. 750/- in the present case. Looking to the disability of 20%, the per month loss shall come to Rs. 150/- which in turn is Rs. 1,800/- per annum.

8.1 The Tribunal has in the present case applied the multiplier of 15 years which in my opinion is just and proper. Hence, the future loss of income shall come to Rs. 27,000/- (Rs. 1800/- x 15). Since the Tribunal has already awarded Rs. 21,600/-, an additional amount of Rs. 5,400/- shall be awarded to the appellant under the head of future loss of income.

9. The appellant has also contended for an increase in the amount awarded under the head of transportation and special diet. As a result of perusal of records, I am of the opinion that since the appellant has not produced any documentary evidence either in the form of bills or any vouchers, the Tribunal has compensated the appellant quite fairly under the said heads and no interference is called for. In that view of the matter, the appellant is entitled to an additional amount of Rs. 6000/- (Rs. 5400/- under the head of future loss of income and Rs. 600/- towards personal attendant charges).

10. In the premises aforesaid, the appeal is partly allowed. The appellant shall be entitled to an additional amount of Rs. 6000/- along with interest at the rate of 6% per annum from the date of application till realization. The award of the Tribunal is modified

accordingly. No order as to costs.

(K.S. JHAVERI, J.)

Divya//